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ACTION AF-00

INFO	LOG-00	NP-00	AGRE-00	AID-00	AMAD-00	CIAE-00	COME-00
	DODE-00	SRPP-00	DS-00	EB-00	EUR-00	VC-00	H-01
	TEDE-00	INR-00	IO-00	L-00	VCE-00	AC-01	NSAE-00
	OIC-02	OMB-01	OPIC-01	PA-00	PM-00	PRS-00	ACE-00
	P-00	SP-00	STR-00	TRSE-00	USIE-00	R-00	PMB-00
	DSCC-00	PRM-02	DRL-02	G-00	NFAT-00	SAS-00	SWCI-00
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FM AMEMBASSY HARARE
TO SECSTATE WASHDC PRIORITY 7667
INFO NSC WASHDC PRIORITY
SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
AMEMBASSY NAIROBI

C O N F I D E N T I A L HARARE 006547

SIPDIS

NSC FOR SENIOR AFRICA DIRECTOR GAYLE SMITH

LONDON FOR GURNEY

PARIS FOR BISA WILLIAMS

NAIROBI FOR PFLAUMER

PASS USTR FOR ROSA WHITAKER

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E.O. 12958: DECL: 11/21/2010
TAGS: [PGOV](#) [PHUM](#) [EAGR](#) [Z1](#)
SUBJECT: HIGH COURT (APPARENTLY) TRUMPS SUPREME COURT ON
EVICTON CASE

REF: HARARE 6330

CLASSIFIED BY AMBASSADOR TOM MCDONALD FOR REASON 1.5
(D).

1. (C) THE GOVERNMENT-INFLUENCED "THE HERALD" NEWSPAPER'S NOVEMBER 21 EDITION REPORTED THAT HIGH COURT JUDGE PRESIDENT JUSTICE GODFREY CHIDYASIKU ISSUED A PROVISIONAL ORDER IN CHAMBERS NOVEMBER 20 WHICH SOUGHT TO PREVENT THE GOVERNMENT FROM EXPELLING "RESETTLED FARMERS," IN ACCORDANCE WITH A SUPREME COURT CONSENT ORDER (REFTEL). FOLLOWING AN APPLICATION BY THE COMMERCIAL FARMERS UNION, THE SUPREME COURT ISSUED A CONSENT ORDER ON NOVEMBER 10 FOR THE GOVERNMENT TO FOLLOW ALL NECESSARY LEGAL REQUIREMENTS IN TERMS OF THE LAND ACQUISITION ACT BEFORE RESETTLING PEOPLE. ON NOVEMBER 20 THE HIGH COURT GRANTED ONE SAMSON MHURIRO PERMISSION TO REPRESENT RURAL PEASANT FARMERS ON ALL OCCUPIED FARMS IN A CONSTITUTIONAL APPLICATION, IN TERMS OF THE CLASS ACTION ACT AND GAVE HIM FIFTEEN DAYS TO DO SO. THE GOVERNMENT, CFU AND THE POLICE, WHO WERE CITED AS RESPONDENTS, WERE GIVEN TEN DAYS TO OPPOSE THE PROVISIONAL ORDER. IF THEY FAIL TO DO SO, THE ORDER WILL BE AUTOMATICALLY CONFIRMED. MHURIRO, WHO WAS RESETTLED AT VICTORY FARM IN MASHONALAND EAST IN 1998, FILED HIS APPLICATION LAST WEEK FOR LEAVE TO SEEK A

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REVIEW, SCRAPPING AND OR VARIATION OF THE SUPREME COURT ORDER. HE ALLEGED THAT UP TO 26,000 FAMILIES CURRENTLY ON FARMS WOULD BE AFFECTED BY EVICTIONS, AS THEY HAVE NO PLACE TO GO. MHURIRO FURTHER STATED THAT HE BELIEVED THEIR RESETTLEMENT WAS DONE IN TERMS OF THE LAW, AND WAS CONSTITUTIONALLY ENTITLED TO SECURE PROTECTION OF THE LAW, AS HE WAS NOT PARTY TO THE SUPREME COURT ORDER.

2. (C) CONTACTED FOR COMMENT ON NOVEMBER 21, THE COMMERCIAL FARMERS UNION (FU) VICE PRESIDENT FOR REGIONS, WILLIAM HUGHES, SAID HIS ORGANIZATION COULD NOT UNDERSTAND HOW THE HIGH COURT CAN OVERRULE THE SUPREME COURT. OUR LEGAL ADVISOR, ROBERT STUMBLES, TELLS US THAT ALTHOUGH LOWER COURTS HAVE RESPECT FOR HIGHER COURT JUDGMENTS AND SUPREME COURT RULINGS ARE BINDING ON LOWER COURTS, A LOWER COURT JUDGE CAN DISTINGUISH A CASE BEFORE HIM AS BEING SLIGHTLY DIFFERENT FROM THE INTENT OF A PARTICULAR SUPREME COURT RULING. IT APPEARS TO HAVE HAPPENED IN THIS CASE, ALTHOUGH IT REMAINS UNCLEAR WHETHER CHIDYASIKU HAS THE AUTHORITY TO STOP IMPLEMENTATION OF THE CONSENT ORDER BASED ON A CASE THAT

OCCURRED TWO YEARS PRIOR TO THE SET OF CIRCUMSTANCES THAT SPARKED THE SUPREME COURT RULING IN THE FIRST PLACE. THE CFU VICE PRESIDENT SAID HIS LAWYERS WOULD BE LOOKING INTO THE CASE. THEY HAVE LEARNED THAT JUSTICE CHIDYAUUSIKU WOULD CLARIFY THE SITUATION SHORTLY, BUT IN THE EVENT CHIDYAUUSIKU DOES NOT WITHDRAW HIS ORDER ON NOVEMBER 22, THEY WILL PREPARE A LEGAL RESPONSE.

13. (C) COMMENT: TO US THIS APPEARS LIKE ANOTHER ATTEMPT BY THE GOVERNMENT TO DISCREDIT THE JUDICIARY. SUPREME
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COURT CHIEF JUSTICE, WHO ISSUED THE CONSENT ORDER ON NOVEMBER 10, IS WHITE AND RECENTLY HAS BEEN VILIFIED BY THE MUGABE GOVERNMENT FOR BEING A BRITISH PAWN. JUSTICE CHIDYAUUSIKU IS WIDELY KNOWN TO BE A ZANU-PF SYMPATHIZER AND ALREADY HAS TAKEN ACTIONS TO THWART THE OPPOSITION, FOR EXAMPLE, DELAYING THE CONSIDERATION OF URGENT APPLICATIONS BY THE MOVEMENT FOR DEMOCRATIC CHANGE TO OVERTURN PARLIAMENTARY ELECTION RESULTS IN VARIOUS CONSTITUENCIES CHARACTERIZED BY INTIMIDATION OR RIGGING. IF CHIDYAUUSIKU STANDS BY HIS RULING, THE CFU, THE MOST AFFECTED PARTY, COULD WELL APPEAL IT TO THE SUPREME COURT, A FACT THAT WILL DELAY THE RESTORATION OF THE RULE OF LAW TO THE COMMERCIAL FARMS. END COMMENT.

MCDONALD

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